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February 13, 2012

By ECF

Honorable Nicholas G. Garaufis
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Myron Gushlak, 03 Cr. 833 (NGG)

Dear Judge Garaufis:

The government's motion to preclude defense expert Mr. Robert Lowry from testifying at the restitution hearing in this case scheduled for tomorrow morning should be denied.

The premise of the request, that Mr. Lowry's prior reports dated January 4, 2011 and February 7, 2011 "are no longer relevant to the instant proceeding," is not accurate. As counsel explained to the government in a telephone conversation, the essence of Mr. Lowry's testimony is that the government has not conducted analyses of trading data which establishes the precise nature and scope of the manipulation and its effects, if any, on the stock price. This is the concern of his prior expert reports. Mr. Lowry will explain the manipulation and damages analysis that he has long conducted on behalf of the SEC and the Department of Justice, both while an employee of the SEC, and thereafter as an expert on the government's behalf. Mr. Lowry will also explain that proper manipulation analysis, which was suggested by this Court in its July 26, 2011 Order, has not been employed by the government in this case. For these reasons, he will explain, the DeRosa analysis is unreliable.

At the last status conference before the Court on January 30, 2012, co-counsel Brian Rosner made note of the fact that the defense was planning to call witnesses at tomorrow's hearing which included Mr. Lowry. On February 8, 2012, Mr. Rosner informed the government that Mr. Lowry was in fact available and would be called as a

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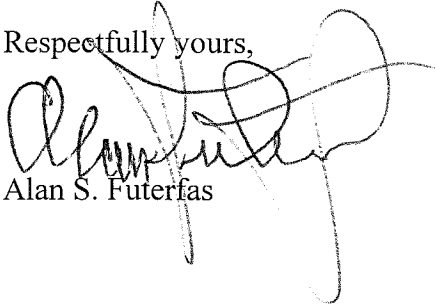
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witness. In response, the government simply requested Mr. Lowry's updated curriculum vitae (which was provided later the same day), and did not raise any objection.

Given the simplicity of his testimony and the fact that he had authored two prior reports, Mr. Lowry was not asked to write an additional expert report. Nonetheless, the government has been thoroughly apprised of the subject of his testimony. Mr. Lowry's testimony, though uncomplicated and straightforward, is extremely important. Mr. Lowry has testified or written reports in manipulation cases on behalf of the SEC and Department of Justice on approximately 35 occasions. His analysis of the deficits of the government's current presentation is plain and entirely consistent with his two prior expert reports, which the government has had for over a year.

The government's request to exclude this testimony on timeliness grounds rings hollow, as it just last night provided statistical data regarding DeRosa's report which defense counsel has been requesting since December 5, 2011. As defense expert Dr. David Juran explained in his January 24, 2012 affidavit submitted in support of the objections to the government's fourth request for restitution, without this data, the government expert's statistical analysis "lacked that credibility" that comes with the ability for another in the field to replicate its results.

Respectfully yours,



Alan S. Futerfas

cc: All counsel